

**WATER POLICY SUBCOMMITTEE
ENVIRONMENTAL QUALITY COUNCIL (EQC)**

Meeting Minutes

October 21, 1999

Draft: November 1, 1999

Approved January 20, 2000

EQC MEMBERS PRESENT

Sen. Bea McCarthy, Chair*

Rep. Bill Tash*

Sen. Jon Tester*

Sen. Mack Cole

Sen. Ken Mesaros

* Subcommittee Members

STAFF MEMBERS PRESENT

Mary Vandebosch

Agenda ([Attachment 1](#))

Visitors' list (Attachment 2)

I INTRODUCTION AND ROLL CALL

The meeting was called to order at 6:30 p.m. by CHAIRMAN MCCARTHY.

**II DEQ PROPOSED GENERAL CONCENTRATED ANIMAL FEEDING OPERATION
(CAFO) PERMIT**

A Brief overview of proposal and process for comments

CHAIRMAN MCCARTHY explained that the Department of Environmental Quality (DEQ) was conducting a public comment period with a deadline of November 2, 1999. Interested persons would need to file comments with the DEQ.

B Public comments on proposal

Dennis Tighe, Montana Wilderness Association, remarked that he represented clients who had a hog operation and were sued by neighbors over alleged contamination of water and noxious smells. There was a challenge as to whether or not insurance would cover that type of litigation. He maintained that concentrated animal feeding operations needed to be strictly regulated. Pig operations are of particular concern. A 50,000 hog operation has as much effluent as Salt Lake City. A pig excretes up to four times more than a human being. In North Carolina, Missouri, and Iowa, the pork industry was welcomed by the Legislature, but now citizens in these states have become very involved and as a result regulations are now being tightened. The four largest hog operations in the U.S. are looking for other states to set up their operations and they are especially interested in the western states.

In Missouri from 1990- 1994, the Department of Natural Resources found that 63% of all CAFOs larger than 1,000 units had spills directly into the water courses that affected the environment. Citizens in rural communities have stated that the smell is terrible. In Virginia, Maryland, and

North Carolina, the waste from the CAFO operations caused significant problems with water. They found plumes of *pfisteria*. Billions of fish have been killed. In Iowa, a large hog operation turned around and sued the township for \$7.9 million because the new regulations were a "takings." These operations should be strictly regulated and looked at closely because of the problems they have raised.

Aart Dolman, Teacher and Environmentalist, remarked that the Dutch government was forced to cut the hog population by one-third due to the impact to the groundwater. There were as many hogs in the country as there were people. Hogs produce more liquid than other animals and handling the waste is a very big problem. He further noted factory farms force the small farmer out of business. People who work in these factories are paid minimum wage. This has a tremendous affect on agriculture in Montana.

David Oien, Farmer, presented his written testimony, [Exhibit 1](#).

Lauran Dundee, Northern Plains Resource Council, presented her written testimony [Exhibit 2](#).

Joanne Moretta, Farmer/Rancher/Outfitter, suggested that it was time to look beyond industries that don't work in Montana and focus on those that are environmentally sound and that provide a good future for Montana. She noted that Europe has new ideas for utilizing recycled materials. Animal factories have already been proven to be a big problem in the areas where they are located.

Larry Kriel, Citizen, was appreciative of the opportunity for public comment. There is a lot of common sense and wisdom among the populace. This is not an economic benefit for Montana. The huge hog farm in Nebraska results in a corporation doing well financially. It is creating tremendous pollution problems which the citizens will need to address. For every action there is an equal and opposite reaction. To avoid reactions, careful planning and foresight is imperative. Water quality is very precious in this state and can be one of the most powerful economic tools in the future. Governor Racicot's Vision 2000 Program is a corporate blueprint for the takeover of Montana. In North Carolina, the *pfisteria* outbreak did not occur until an impoundment pond broke and 23 million gallons of pig waste flowed into the river. The *pfisteria* impacts more than fish.

This situation is similar to using cyanide in gold mines. Colorado had the Summitville Mine where the citizens paid \$150 million for the cleanup. The bad examples are out there and other states have reacted. Colorado and Wyoming have restricted corporate hog farms. He stressed the importance that the public be informed about the effects of these operations.

Steve Ruhd, Conrad Public Works Director, remarked that the City of Conrad supplies drinking water to almost 3,000 persons. A few years ago there was a cryptosporidium outbreak in Milwaukee which sickened over 100,000 persons and killed numerous others. It was determined that a large CAFO in a watershed combined with water plant operation problems contributed to the outbreak. Since that time the EPA and the DEQ have been promoting a source water protection program as a layer of protection to the drinking water treatment processes used in surface water treatment. However, the City of Conrad has found that when they work on protecting their drinking water, there is no help from the DEQ. They have found that permits in the watershed have been changed without their knowledge. Sewage was

accidentally released into the B Canal operated by the Pondera County Canal and Reservoir Company. The B Canal runs into Lake Frances. This is Conrad's drinking water source. It is estimated that approximately 3,000 gallons of contaminant was released into the canal and about 1,000 gallons had entered the lake.

In 1994, the DEQ held a public meeting in Dupuyer to discuss a discharge permit and listened to the objections to inject animal waste into the ground. In 1993, when the Pondera Colony began construction, they were required to have a discharge permit before operations could begin. Operations began four months before a permit was issued and no penalties were assessed. **Mr. Ruhd** and the Mayor of Conrad were told that there was plenty of land for injecting the manure. In 1997, they were spreading sewage on the surface of their fields. This was reported to the DEQ and they were advised by the DEQ that the Colony was spreading straw on the field. The Colony's neighbors were not contacted.

This summer he was advised that the Colony had plans to surface apply the manure to their fields through the irrigation systems. This was allowed in their permit. He had also been advised that their irrigation system sprayed sewage into the creek that feeds Lake Francis. There are problems with their installation. They are using a 30 year old irrigation system which does not meet the standards for sewage application. Prompt reporting may have allowed the canal company to bypass all the sewage. Proper specification for this application may have identified this problem beforehand.

Conrad has had to upgrade their treatment processes at their water plant to make sure their drinking water is not contaminated. This has been costly. He questioned what steps the DEQ is taking to prevent this from happening in the future.

Stuart Lewin, Missouri River Citizens, Inc., remarked that having the DEQ handle Montana's environmental problems is like putting the fox in charge of the hen house. We should not be considering large hog operations when we are not able to monitor simple operations in this state.

Kevin Calfine, Rancher, remarked that his organically grown pork was marketed to households, food stores, and guest ranches in the state. He suggested moving the animal and not the manure. Montana's farmers and ranchers have the resources to build a marketing infrastructure. Farmers and ranchers are good at growing animals but need help with marketing.

Paul Cohen, Citizen, offered a speech from John Ikerd, University of Missouri, entitled, "The Real Economics of Factory Livestock" ([Exhibit 3](#)).

John Youngberg, Montana Farm Bureau, stated that Montana technically does not have a CAFO for hogs. There is a permitted operation that is considered an animal feeding operation, but this is not a confined feeding operation. A CAFO is 2,500 head of swine or more. The proposed permit would allow the department to require the operation to have an individual discharge permit. This would allow for more restrictions than the general discharge permit. If the operation is discharging to surface waters, they are not in compliance with their permit and could be required to seek an individual permit.

The general permit applies to odors and flies. The City of Billings has annexed next to a family farming operation. What happens when odor becomes an issue? Odor falls under nuisance law.

The cost of regulation really hurts family farms in Montana. The general permit would require all CAFOs that have a comprehensive nutrient management plan to modify the feed given to the animals to control the nutrients' in the waste. This is beyond the authority of the Montana Water Pollution Control Act or the Clean Water Act. It would also require the operation to manage the crop residue so as to lessen the impact on it. This would involve knowing the amount of dry and liquid matter placed on fields. These records would need to be maintained for three years and updated annually. This would be very costly because experts would need to be hired to accomplish this task.

This permit requires that a holding facility be built to hold the waste during a 25-year, 24-hour storm event. The old permit allowed a 15 day window.

Steve Pilcher, Montana Stockgrowers Association, related that the DEQ has prepared a document entitled, "The Draft Strategy for Improving Compliance with Water Quality Regulations for Animal Feeding Operations." This document sets forth the policy of the agency and the department in regulating livestock waste. The general permit is merely the tool to implement this policy. The Strategy document was released for public comment from May 19 to July 30. Before the comments had been received and considered, the department issued a public notice of the general permit revisions. These were sent out for public review as well. The comments on the policies should have been reviewed before the specifics were set forth. On August 6th, the U.S. Environmental Protection Agency (EPA) issued the draft guidance manual and example permit for states to use in modifying general permits.

The EPA has also initiated revisions to two of their regulations: the National Effluent Limitation Guideline Regulations for Animal Feeding Operations and the MPDES Regulation for Animal Feeding Operations. They are reviewing many of the same changes as the DEQ is reviewing. He questioned the urgency. The general permit expired on June 30, 1999. This involves 50 to 60 permits. These are nondischarging facilities. The MPDES regulations allow for an administrative extension of the permits until they can be renewed. The changes being made in the general permit need to truly reflect both the strategy at the state and federal levels.

There are a number of terms included in the revised general permit that are not defined. Examples include: national performance expectation, federal discharge compliance criteria, significant contributor of pollution, etc.

The effluent limitations for concentrated animal feeding operations are to contain the waste from a 25- year, 24-hour rainfall event. The language "or equivalent precipitation over a 15 day period" has been in the livestock waste control permits since before 1974. The department maintains that the inclusion of the term "chronic" or "catastrophic" covers these situations. He questioned the definition of a "chronic rainfall event".

The proposed revisions include mandatory obligations in the area of flies, odors, and disposal of dead animals. Every permit issued to date has included recommendations for responsible management of waste material to reduce the problems associated with flies, odors and dead animal disposal, but this has not been mandated. Water quality laws do not extend federal or state authority into areas of flies, odors, and dead animal disposal.

Property rights management and individual rights are threatened by the requirement to develop and implement a comprehensive nutrient management plan. The federal requirement is a

recommendation. The DEQ has taken a recommendation and changed it into a requirement. This will be a difficult test to meet.

He questioned the legality of using a point source permit to regulate a nonpoint source activity such as land application. This sets a very dangerous precedent. The Federal Clean Water Act does not regulate nonpoint source activities. When animal confinement operations were included in a definition of point source activity in 1974 because there were 1,000 animal units in confinement, many people questioned the legal authority involved. The mismanagement of land application of livestock waste that creates a water quality problem can be addressed under the enforcement provisions of the Montana Water Quality Act or the Federal Clean Water Act.

The permit includes some reopener provisions, which are an opportunity for the department to reevaluate the conditions of a permit. These provisions include the situation where water quality standards are exceeded even if the pollutant is not regulated in the permit. A water quality problem that is due to some parameter that is not associated with livestock waste, would allow the department to reopen the permit. If a TMDL is developed for a watershed, they can change the permit.

The language further states that the director can designate an animal feeding operation as a concentrated animal feeding operation, thus requiring a permit, if it is a significant contributor of pollution. He raised a concern about the subjectivity of this provision.

John Bloomquist, Montana Stockgrowers Association, remarked that the proposed changes to the general permit contain significant policy changes. The Federal Clean Water Act focuses the regulatory aspects on point source discharges and this includes confined animal operations. It does not regulate nonpoint sources of pollution. Nonpoint sources of pollution are general runoff activities, grazing, irrigation, rain, land development, etc. Congress left nonpoint sources of pollution up to the states. This was not to be a regulated activity. The Montana Stockgrowers Association has been involved in the development of the nonpoint source management program which has been approved by the EPA. This involves an education program based on demonstration projects. The confined animal feeding operation is and should be a permitted activity. The proposed permit attaches the comprehensive nutrient management plan which deals with traditionally nonpoint source activities. The legality of this situation is suspect. Permit conditions are enforceable and penalties apply.

A concern in the reopener provision is allowing the permit to be reopened if a TMDL is in place. He maintained that Montana has a very aggressive TMDL Program.

The CAFOs would be permitted and subject to the Water Quality Act. Enforcement and penalties would be available. The concern with certain activities that are occurring are not due to permitting, but to enforcement.

Rep. John Holden, HD 86, commented that we have to separate nonpoint source operations and point source operations. A 300 to 500 sow unit involves more than 2,500 pigs per year. Rough animal sewage has been sprayed through pivot sprinkler systems. The *e. coli* outbreaks currently going on make it imperative that this contamination be addressed. There have to be better ways to dispose of this waste.

Carrie Cohen, Organic Food Products, maintained that many people are making the decision to no longer eat meat. This is coming from the numerous outbreaks which have been taking place in this country.

Neil Ugrin, Attorney, commented that he has represented the Hutterite Colonies for many years. They have spent hundreds of thousands of dollars to control pollution. They confine animal waste in a steel, glass-lined tank. They have been heavily regulated by the DEQ. The ground is tested multiple times each year in multiple locations to make sure that the uptake is proper. They are very conscious of environmental implications and their high profile and are taking every opportunity to do things the right way. This week there was a break in a pipe that lasted for a couple of minutes on a Hutterite Colony in the Lake Francis area. It was self reported and cleaned up by the colony. The DEQ is continuing to perform tests addressing this problem.

Questions from Committee Members

SEN. COLE asked the number of feedlots in Montana that have over 1,000 AUMs or 2,500 pigs.

Mark Simonich, Director of the DEQ, explained that 73 operations have permits under the general permit. The Department does not inventory agricultural operations in the state to determine head of cattle on the site. This is done on a voluntary basis. One of the reasons for using a general permit is that it minimizes the workload for department staff who work on multiple individual permits. It is also more efficient for the operations themselves.

REP. TASH asked for further clarification of the TMDL concerns. **Director Simonich** maintained that he believes the EPA still sees the Montana TMDL Program as a model program. The reopener proposed in the general permit includes that in the case of a particular stream, if in developing the TMDL it is determined that a problem needs to be addressed, it is unfair to address that problem with all the other point source discharges on the stream, without also looking at the animal operation. The permit would not be reopened for a TMDL due to a sedimentation or a habitat matter. He acknowledged that this needed to be more clearly defined in the proposed language.

SEN. MESAROS remarked that the concerns did seem to focus more on enforcement than on permitting.

Director Simonich affirmed and added that whether an individual is operating on their own or under a permit, adherence to the law is mandatory. If a violation occurs, enforcement action is taken. The DEQ has the ability to issue administrative penalties and the also work with the entity on compliance plans.

SEN. MESAROS remarked that there were many concerns which included the number of operations in the state that might fall under this category, the costs associated with the nutrient management plans, and the lack of definition of terms. He questioned the urgency of pursuing changes to the general permit.

Director Simonich explained that the only urgency is the authority to issue administrative extensions of those permits which is always a concern to the EPA. If there is a larger interest that the DEQ should proceed at a slower pace, he is willing to do so. He added that the comment period has been extended and he encouraged timely public comment.

SEN. TESTER asked if the DEQ intends to use the general permit in those cases involving 2,500 or more head. **Director Simonich** clarified that it is their intent to use the general permit for any operation that will meet the criteria. If the criteria cannot be met, they will move to individual permitting. They are not trying to target any type of operation (i.e., hog versus another type). They are laying out specific information in the general permit.

SEN. TESTER further questions the fees for a general permit and an individual permit. **Director Simonich** explained that the general permit involved a \$200 application fee and an additional \$250 annual fee. This permit is valid for five years. The individual permit is set up on a scale based on volumes. Depending on the size of the operation and the volume of waste involved, it can become a fairly expensive permit.

SEN. TESTER asked if the department handled on-site visits. **Director Simonich** maintained that onsite visits were infrequent. They have 1.5 FTE assigned to this program. The focus is on permitting facilities.

SEN. TESTER questioned whether there are any fines levied if the owner of an operation does and/or does not report the discharge. **Director Simonich** explained that the administrative penalty authority they have is from the Water Quality Act. They can issue administrative penalty up to \$10,000 per day of violation. They prepared a scale to determine the gravity of the situation. Whether or not the operation reported the discharge would be considered when determining the penalty.

SEN. TESTER remarked that a point brought up earlier is that an individual permit was changed to a general permit and no one was aware that this had taken place. He questioned the notification procedure.

Director Simonich maintained that when issuing a permit they do issue notices in a number of ways. Within the past year, the department has started to take out specific advertisement in newspapers. This is a larger ad than a legal notice. A permit on a specific facility is published in a local newspaper in the vicinity in addition to newspapers that are in general circulation.

III ADOPTION OF MINUTES

Motion/Vote: REP. TASH MOVED THAT THE MINUTES OF THE SEPTEMBER 21,1999 WATER POLICY SUBCOMMITTEE MEETING BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.

IV ADJOURNMENT

There being no further business, the meeting adjourned at 8:25 p.m.

SEN. BEA MCCARTHY, Chair